

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ROBERT TREVINO,
Plaintiff,
v.
E. DOTSON, et al.,
Defendants.

Case No. [15-cv-05373-PJH](#)

ORDER DENYING MOTIONS

Re: Dkt. Nos. 93, 94, 95, 97, 100

Plaintiff proceeds with a pro se civil rights action. On April 5, 2017, defendants filed a motion for summary judgment alleging that plaintiff failed to exhaust his administrative remedies and that the doctrine of collateral estoppel favors dismissal because plaintiff already litigated the same issues in state court. Plaintiff has been provided several extensions and was to file an opposition by July 23, 2017. Plaintiff has still not filed an opposition, but has filed several other motions seeking discovery, an evidentiary hearing and reconsideration of prior court rulings.

Discovery is stayed in this case pending resolution of the summary judgment motion involving exhaustion and collateral estoppel. The court has denied several prior motions for discovery and an evidentiary hearing because they concern issues related to the underlying issues of this case and not to exhaustion or collateral estoppel. Plaintiff's new motions for discovery and an evidentiary hearing are denied for the same reasons as set forth in the prior orders.

Plaintiff's motions for reconsideration are also denied. No pre-judgment motion for reconsideration under Local Rule 7-9 may be brought without leave of court. See Civil L.R. 7-9(a). The moving party must specifically show: (1) that at the time of the motion

1 for leave, a material difference in fact or law exists from that which was presented to the
2 court before entry of the interlocutory order for which the reconsideration is sought, and
3 that in the exercise of reasonable diligence the party applying for reconsideration did not
4 know such fact or law at the time of the interlocutory order; or (2) the emergence of new
5 material facts or a change of law occurring after the time of such order; or (3) a manifest
6 failure by the court to consider material facts which were presented to the court before
7 such interlocutory order. See Civil L.R. 7-9(b).

8 Plaintiff has failed to show any new material facts or changes of law with respect
9 to his requests for discovery and an evidentiary hearing. Plaintiff has not shown that his
10 discovery requests relate to exhaustion or collateral estoppel in order to prepare an
11 opposition. Once the summary judgment motion is fully briefed, the court will determine if
12 a hearing is required. If this case proceeds past this summary judgment motion plaintiff
13 may file a motion to compel additional discovery. Defendants have already responded to
14 124 discovery requests but plaintiff served 259 more requests.

15 Plaintiff has also returned a document subpoena form for the court to serve. The
16 subpoena is for fingerprint evidence and photographs concerning the underlying
17 disciplinary infraction that is the subject of this action. The court previously discussed its
18 reasons for declining to issue the same subpoena. The most recent subpoena will not be
19 served for the same reasons.

20 CONCLUSION

21 1. Plaintiff's motion for an extension is (Docket No. 93) is **GRANTED**. Plaintiff
22 must file an opposition by **August 23, 2017**. Failure to file an opposition by that date
23 may result in the court ruling on the unopposed motion.

24 2. The motions for reconsideration and an evidentiary hearing (Docket No. 94, 95,
25 97, 100) are **DENIED**.

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IT IS SO ORDERED.

Dated: July 31, 2017



PHYLLIS J. HAMILTON
United States District Judge

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on July 31, 2017, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Robert Trevino ID: J-64367
Salinas Valley State Prison D4-#130L
P.O. Box 1050
Soledad, CA 93960

Dated: July 31, 2017

Susan Y. Soong
Clerk, United States District Court



By: _____
Kelly Collins, Deputy Clerk to the
Honorable PHYLLIS J. HAMILTON